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Malice aplenty, not much libel

Ariel Sharon demonstrated libel, but couldn't prove that Time magazine went after him with malice.

William C. Westmoreland never proved that he had been libeled, but his nine-week trial demonstrated to nearly everyone that CBS went after him with wickedly effective malice.

"I believe CBS showed a reckless disregard for the truth," said the one juror who said he was leaning toward a verdict in the general's favor.

"The question was, 'What is the truth?'"

Whatever it is, Truth is only rarely adduced in a courtroom, where mere justice leads a life of anonymity and frequent abuse. Nor was Truth, as we have seen, in the exclusive employ of Gen. Westmoreland.

The New York Times correctly noted yesterday that the most interesting question about the episode is why the general should have been reluctant to send high estimates of enemy troop strength on to the White House between 1964 and 1968, and wondered why, 15 years later, the "journalists" at CBS thought this was such hot news.

Gen. Westmoreland was reluctant probably because he had been told to win the war because it was necessary, but to make as little noise as he could because the war was unpopular. Lyndon Johnson, arguably the purest example of the sappy welfare-state liberal among all our presidents, was determined to do as little as he could to help.

He was ladling out gravy at home in the War on Poverty, the war in which war-profiteering was an honorable aim in the war that became American liberalism's noblest cause.

But if cooking the numbers was, in itself, hardly a misdemeanor, it was something that a CBS documentary could — and did — represent as awful felony.

With malice aforethought, a particularly clever documentary might revive the ugliness of the Vietnam years with an attack on the American general who became a symbol of the war, making some people believe that he cooked the numbers so he could continue to wage war, massacre civilians, and send American boys home in body bags.

The making of a television documentary is a particularly sleazy craft at best, and George Crile, the producer of the Westmoreland documentary, is one of the most skilled practitioners of it.

With coached witnesses, faked interviews, and unfair camera angles — all more or less acceptable elements in the craft — a good "doc unit" could persuade a television viewer that Mother Teresa is no better than she has to be. William Westmoreland was an easy target of opportunity for CBS.

So the libel trial of the century ends with a burp and a whimper.

Nobody really believes Gen. Westmoreland's boast that he had "won" because he had got the "apology" that CBS had refused to offer him, but nobody could believe CBS, either, when it said it had "never intended to assert and does not believe that General Westmoreland was unpatriotic or disloyal in performing his duties as he saw them."

In fact, if CBS meant what it said — if CBS meant to imply what any reasonable viewer would have inferred about Gen. Westmoreland's motives for deceiving President Johnson — it accused Gen. Westmoreland of nothing less than betraying his country by being disloyal to the commander-in-chief in the heat of battle. Nor, for that matter, does anyone believe that Gen. Westmoreland actually "respects the long and distinguished journalistic tradition of CBS," as he said he did in the statement that was written by the lawyers who drew up the agreement to withdraw the lawsuit.

Gen. Westmoreland made the mistake that few in the news business make, that the television networks are in the business of retailing news. "News" had nothing to do with what CBS set out to do to the old general.

Gen. Westmoreland "lost" the day he agreed to co-operate in the production of this documentary; an innocent man might as well volunteer to help build his gallows in the expectation of thus assuaging the blood lust of a hanging judge eager to draw a crowd.

The agreement, like the trial, settled nothing. Irresponsible "journalists" continue to test the limits of the public's patience, often to the applause of real journalists who know better.

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